

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	Case No. 08-35653
)	
CIRCUIT CITY STORES, INC.,)	Chapter 11
)	
Debtor.)	
)	

**RESPONSE OF ORIX CAPITAL MARKETS, LLC, TO THE LIQUIDATING TRUST'S
TWENTY-FIRST OMNIBUS OBJECTION TO LANDLORD CLAIMS (REDUCTION
OF CERTAIN PARTIALLY INVALID CLAIMS, RECLASSIFICATION OF CERTAIN
MISCLASSIFIED CLAIMS, DISALLOWANCE OF CERTAIN INVALID CLAIMS,
DISALLOWANCE OF CERTAIN LATE FILED CLAIMS
AND DISALLOWANCE OF CERTAIN AMENDED CLAIMS)
(Claim No. 14058)**

ORIX Capital Markets, LLC ("Claimant"), as Special Servicer on behalf of Bank of America, N.A. (successor by merger to LaSalle Bank, N.A.), as Trustee for the Holders of Asset Securitization Corporation, Commercial Mortgage Pass-Through Certificates Series 1997-D5, hereby files its response (the "Response") to the Liquidating Trust's Twenty-First Omnibus Objection to Landlord Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claims, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims and Disallowance of Certain Amended Claims) (the "Objection") and, in support thereof, states as follows:

Background

1. On June 30, 2009, Claimant filed an administrative expense request in the amount of \$193,197.76 for postpetition rent and related charges incurred in connection with Store No. 3606, located in Shelby, Michigan (Claim No. 14058).

Lawrence A. Katz (VSB No. 47664)
Kristen E. Burgers (VSB No. 67997)
8010 Towers Crescent Drive, Suite 300
Vienna, VA 22182-2707
P: (703) 760-1600
F: (703) 821-8949

Counsel for ORIX Capital Markets, LLC

2. On February 28, 2011, the Liquidating Trust filed the Objection, whereby it objected to Claim No. 14058.

Basis for Claims

A. The Trust Is the Rightful Claimant of All Claims Against the Debtor Held by the Borrower.

3. Bank of America, N.A., successor by merger to LaSalle Bank, N.A., is the Trustee for a trust fund, the beneficial ownership of which is evidenced by various classes of mortgage pass-through certificates known as the Asset Securitization Corporation, Commercial Mortgage Pass-Through Certificates Series 1997 D-5 (the “Trust” or “Claimant”). KeyBank, N.A. is the Master Servicer and Claimant is the Special Servicer for the Trust.

4. As of April 30, 1997, Bond-Circuit X Delaware Business Trust (the “Borrower”) executed a Promissory Note (the “Note”) in favor of Nomura Asset Capital Corporation in the original principal amount of \$4,949,210.96 (the “Loan”). The Note was secured by, among other things, a certain piece of real property located at 14105 Hall Road, Shelby, Michigan (together with all personal property, as described in more detail in paragraph 6, the “Collateral Property”) pursuant to a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of April 30, 1997 (the “Deed of Trust”). In addition, the Borrower executed an Assignment of Leases and Rents dated April 30, 1997 (the “Assignment of Leases and Rents”).

5. The Collateral Property is the site of Store No. 3606. The Note, Deed of Trust and Assignment of Leases and Rents are hereinafter collectively referred to as the “Loan Documents” and were attached as exhibits to the general unsecured claim filed by Claimant in connection with Store No. 3606 (Claim No. 12161).

6. Pursuant to the terms of the Loan Documents, the Trust has a lien on all rights, title and interest in and to the Collateral Property, including but not limited to all buildings, structures, improvements and tenements thereon, all easements, rights-of-way, appurtenances, leases, rents, issues, proceeds, profits, and all fixtures, machinery, motors, elevators, radiators, and all plumbing, heating, lighting ventilating, refrigerating, air conditioning and sprinkler equipment, and other interests as set forth in the Deed of Trust.

7. The Debtor leased Store No. 3606 from the Borrower. Pursuant to the terms of a lease dated April 30, 1997 (the "Lease") and any guaranty related thereto, the Debtor is obligated to make monthly rental payments, as well as payments for taxes, common area maintenance, and related charges to the Borrower. The Lease was also attached as an exhibit to Claim No. 12161.

8. To the extent that the Borrower has claims against the Debtor, the Trust possesses a first priority lien on that claim.

9. The Borrower defaulted on the Note, and the Collateral Property was foreclosed. The Trust was the successful bidder at the foreclosure sale, as evidenced by the Sheriff's Deed on Foreclosure Sale dated June 5, 2009, a copy of which will be provided to the Liquidating Trust upon request. As a result of the foreclosure, Claimant is entitled to receive all distributions from the Debtor on account of all claims in connection with Store No. 3606.

B. Claim No. 14058

10. The Liquidating Trust has objected to the amount of Claim No. 14058 as follows: "Amounts claimed are not supported by the Debtor's books and records." The Liquidating Trust proposes expungement of Claim No. 14058.

11. Claim No. 14058 asserts an administrative expense claim for amounts due postpetition in connection with Store No. 3606. The Debtor occupied Store No. 3606 postpetition from November 11, 2008 through and including February 23, 2009 (the “Postpetition Occupancy Period”). During the Postpetition Occupancy Period, Claimant’s books and records show that the Debtor owes \$193,197.76 in connection with Store No. 3606 during the Postpetition Occupancy Period. To the extent that the Debtor’s books and records indicate payment of all or some portion of these amounts, Claimant requests that the Liquidating Trust provide supporting documentation that such payments have been made.

12. Based on the foregoing, Claim No. 14058 should be allowed as an administrative expense of the estate in the amount of \$193,197.76.

13. The Declaration of Brittany Maher in support of Claim No. 14058 is attached hereto as Exhibit A.

WHEREFORE, based on the foregoing, Claimant requests that (i) the Objection be denied with respect to Claim No. 14058 and (ii) Claim No. 14058 be allowed as an administrative expense claim in the amount of \$193,197.76.

DATED: June 2, 2011

VENABLE LLP

/s/ Kristen E. Burgers

Lawrence A. Katz (VSB No. 47664)
Kristen E. Burgers (VSB No. 67997)
8010 Towers Crescent Drive, Suite 300
Vienna, VA 22182-2707
P: (703) 760-1600
F: (703) 821-8949

Counsel for ORIX Capital Markets, LLC